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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
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3 KWABENA GYASI,
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4 Plaintiff,
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5 v. 05 Cv. 9453 (SAS)

5
6 THE CITY OF NEW YORK, et al.,
6
7 Defendants.
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8 ----- x

8
9 June 29, 2006
9
4:40 p.m.

10
10 Before:

11
11 HON. SHIRA A. SCHEINDLIN

12
12 District Judge
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13 APPEARANCES

14 JOEL BERGER
15 Attorney for Plaintiff

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16 MICHAEL A. CARDOZO
16 Corporation Counsel of the City of New York
17 SHERYL BRUZZESE
17 Assistant Corporation Counsel

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1 left holding the bag. Which is why we frequently get punitives
2 for a thousand, two thousand, whatever.

3 The reality is, and those of us who have tracked this
4 for years know it, if the city has represented the officer, if
5 it's a case in which the city has determined the officer is
6 entitled to representation, it's not an off-duty incident, the
7 city invariably does indemnify.

8 THE COURT: Do you dispute that, Ms. Bruzzese, that at
9 the end of the day, if this was done in the line of duty during
10 work hours as part of his regular job, when push comes to
11 shove, you will indemnify him if there is punitive damages? Do
12 you dispute that?

13 MS. BRUZZESE: Not necessarily.

14 THE COURT: Not necessarily what? Was the answer yes?

15 MS. BRUZZESE: We do dispute that. Under 50(k), if
16 punitive damages are awarded, there is a finding by the jury
17 that basically the officer violated the rules and regulations,
18 and under that --

19 THE COURT: I understand. But Mr. Berger claims the
20 reality is, despite that, you always indemnify the officer for
21 punitive damages, and that's why he wants the discovery,
22 because I agree with him, I am not going to mislead the jury.

23 If in fact discovery were to show that 99 out of 100
24 times when there has been a punitive damage award, in reality,
25 the city has always indemnified, then that's the reality.

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1 That's the reality, and I am not charging something that's not
2 true.

3 MS. BRUZZESE: The problem is that I don't understand
4 what claim this goes to. The discovery needs to likely lead to
5 the discovery of admissible evidence.

6 THE COURT: Yes. I will not mischarge the jury.

7 MS. BRUZZESE: We haven't even gotten to that point.

8 THE COURT: I am not talking about when. Put aside
9 when. Not today or a month or two months. I am thinking of
10 ever. Unless you're prepared to concede that if a punitive
11 damage award is made by the jury, the city will pay, at some
12 point this discovery is necessary so as not to mislead the
13 jury.

14 I am not talking about today. I am not going to rule
15 today, but I want you to understand the issue. If this case
16 goes to trial, if there is a liability finding, if the jury
17 then gets punitive damages as an issue, I am not going to
18 mislead them, thinking that it comes out of the poor officer's
19 pocket and have the poor officer say, I have a wife and three
20 kids and a mortgage, I can barely afford the payments, and I
21 earn only 38,000, whatever. I am not going to have all of
22 that. If in fact the reality is that in the last 100 punitive
23 damages awards the city has always indemnified, I am not going
24 to have that testimony at all about his wife, kids and poor
25 salary, because it's all irrelevant.

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